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3-12.100 Role of the Executive Office for United States Attorneys

The Executive Office for United States Attorneys (EOUSA) is responsible for establishing policies and procedures for the collection of criminal fines which includes fines, assessments, penalties, interest, restitution, bail bond forfeitures, and court costs in criminal cases. See 28 C.F.R. §§ 0.22 and 0.171. The Criminal Division of the Department of Justice remains responsible for establishing policy concerning the imposition of criminal fines. See the EOUSA Resource Manual at 111.

3-12.200 Responsibilities of the United States Attorneys

The United States Attorneys are responsible for the enforcement of judgments, fines, penalties and forfeitures imposed in their respective districts. However, the Assistant Attorney General for any litigating

division which has jurisdiction over a case may assume such enforcement responsibilities if she or he so notifies the United States Attorney in writing. Numerous functions relating to the collection of criminal fines are assigned to the Attorney General by statute; these are now delegated to the United States Attorneys. See 28 C.F.R. § 0.171.

Each United States Attorney shall designate an Assistant United States Attorney to be responsible for activities related to the satisfaction, collection, or recovery of judgments, fines, penalties, and forfeitures (including bail bond forfeitures). 28 C.F.R. § 0.171.

For further information, see the EOUSA Resource Manual at 112.

3-12.210 Appearance Bond Forfeiture Judgments

All forfeited appearance bonds should be moved to judgment and collected as expeditiously as possible pursuant to Rule 46 of the Federal Rules of Criminal Procedure.

3-12.220 Asset Forfeiture Judgments

If a money amount is stated in the Final Order of Forfeiture, but the defendant has no known assets, the Financial Litigation Unit does not open a collection case. In asset forfeiture cases the Financial Litigation Unit performs a recording function rather than a financial litigation function. Any further monitoring of an asset forfeiture money judgment case must be done outside of the EOUSA case tracking system.

3-12.300 Enforcement of Criminal Debts During Appeal

Unless the court orders a stay of the criminal imposition as part of the criminal judgment, or provides for other than immediate payment of the fine or restitution, the government should execute on the defendant's property as soon as practicable after sentencing.

If the court orders a stay, or the defendant requests a stay, the government should file a motion requesting the defendant deposit the entire money amount in the court's registry (or in the alternative a bond to guarantee its payment), an order restraining the defendant from transferring or dissipating assets, or require the defendant to submit to an asset examination.

3-12.320 Enforcement of Criminal Debts During Incarceration

United States Attorneys should make every effort to enforce criminal debts that are due during the period of the defendant's incarceration, including coordination of Inmate Financial Responsibility Program payments with the Bureau of Prisons' case worker. Incarceration alone is not justification for placing a debt in suspense.

3-12.330 Fines and Restitution Imposed as Conditions of Probation

Collection procedures for fines and restitution that are conditions of probation vary according to the statute under which they are imposed. Caution should be exercised when collecting a criminal judgment imposed prior to November 11, 1987, as the applicable enforcement statutes are significantly different from current law.

Enforcement efforts on any debt owed by an offender under the supervision of the United States Probation Office should be coordinated with that office.

3-12.340 Liens Against the Defendant's Property

In every restitution case where the victim is other than a federal agency, a notice of lien must be filed by the United States in accordance with 18 U.S.C. § 3613. In cases involving only fines or restitution owed to a federal agency, a notice of lien must be filed if the total amount of those debts exceeds \$600. Upon satisfaction of the debt, a Release of Lien should be filed or sent to the defendant.

3-12.350 Enforcement Proceedings

The provisions of USAM 3-10.500 relating to the enforcement of civil debts, also apply to criminal debt collection. Special attention should be given to enforcing criminal debts for offenses committed prior to November 11, 1987, as the applicable statutes have since been modified. Criminal debts for convictions on or after April 24, 1996, can be enforced under federal or state law or "by all other available and reasonable means." 18 U.S.C. § 3664(m)(1)(A)(i).

3-12.360 Waiver of Interest and Penalties

Interest and late payment penalties for criminal fines and restitution may be waived by the United States Attorney if reasonable efforts to collect them are not likely to be effective. The waiver of interest and penalties should only be considered after the principal amount of the debt has been paid.

3-12.400 Suspense of Criminal Collection Activity

Prior to placing a criminal debt in suspense, liens must be filed to comply with USAM 3-12.340. Criminal debts that are no longer enforceable (e.g., fines over 20 years old or special assessments over five years old) should not be placed into suspense. Fines over 20 years old should be closed unless the United States Attorney and the defendant have agreed in writing to an extension of the period of liability. 18 U.S.C. § 3565(h), repealed. The obligation to pay a special assessment ceases five years after judgment, and as such, the special assessment should be closed. See 18 U.S.C. § 3013.

Criminal debts owed to the United States that are placed in suspense can and will be selected for the IRS Tax Refund Program provided that the defendant's name and Social Security Number are properly entered into the office's case tracking system.

All criminal debts placed in suspense as uncollectible or because the defendant is unlocatable must be periodically reviewed to determine collectibility or whether the defendant can be located.

Appropriate dates must be entered into the case tracking system to ensure timely, periodic review. At least once every year skiptracing efforts must be undertaken or updated financial information obtained to determine if the defendant can be located or has the ability to pay. If the amount of the total criminal debt owed by the defendant is equal to or less than \$25,000 but more than \$10,000, this review may be conducted every two years. If the amount of the total criminal debt is \$10,000 or less, this review may be conducted every three years.

Suspending collection action of a criminal debt has no effect upon the judgment's validity. Whenever the Financial Litigation Unit learns that a defendant has the ability to pay or the defendant can be located, the criminal debt must be promptly removed from suspense and collection action initiated.

Information on the coding of suspense action is available in the United States Attorney's office system operations manual.

3-12.411 Suspense of Criminal Fines -- Deportation

The criminal debts of a defendant, regardless of the total amount, may be placed in suspense if the Financial Litigation Unit has been advised or has information that the debtor has been deported or is a foreign national who has departed the United States. Where appropriate, remission of a fine, in accordance with the remission policy set forth below at 3-12.510, should be considered.

3-12.412 Suspense of Criminal Fines -- Payment is Not Immediate

When the court orders other than immediate payment of a criminal debt, the debt should be suspended until due.

3-12.413 Suspense of Criminal Fines -- Stay of Enforcement

If a criminal case is on appeal and the defendant is granted a stay of enforcement by the court pursuant to Fed. R. Crim. P. 38, all criminal debts should be suspended until the stay is lifted.

3-12.414 Suspense of Criminal Fines -- Criminal Debt is Uncollectible

The criminal debts of a defendant may be placed in suspense if the financial information obtained on the defendant within the last 180 days (such as a financial statement, credit report or third party information) indicates the defendant has no ability to pay or has the ability only to make nominal payments. Nominal payments are those which, if continued at the current payment rate, will not result in payment in full within the life of the debt. Nominal payments shall still be accepted despite the debt being placed in suspense.

3-12.415 Suspense of Criminal Fines -- Defendant is Unlocatable

The criminal debts of a defendant may be placed in suspense if a current address is not available for the defendant and the defendant cannot be located after reasonable diligence. Reasonable diligence is defined as: (1) a policy established by the United States Attorney when the total criminal debts imposed against a defendant are less than \$100,000; and (2) at least three skiptracing efforts are completed when the total criminal debts imposed against a defendant are \$100,000 or more. If a Social Security Number and last known address are available for the defendant, a current credit report must be obtained prior to the case being placed in suspense.

3-12.420 Approval Necessary to Suspend Collection Action

Each United States Attorney's office must establish guidelines for approving the suspense of collection. The following are recommended guidelines, subject to the approval of the United States Attorney:

- For criminal debts imposed totalling less than \$100,000, senior support staff in the Financial Litigation Unit may approve the suspension of collection.
- For criminal debts imposed totalling \$100,000 or more, the Assistant United States Attorney responsible for financial litigation must approve the suspension of collection.

3-12.510 Remission -- Uncollectible Fines

Upon the petition of the government showing that reasonable efforts to collect a fine are not likely to be effective, the court may remit all or part of the unpaid portion of the fine. 18 U.S.C. § 3573. Each United States Attorney should develop a district policy for the remission of uncollectible fines to guide the Financial Litigation Unit in preparing petitions for remission. Where there is a reasonable belief that a fine will never be collected, a petition for remission of all or part of the fine is preferable to placing it in suspense.

3-12.520 Remission of Special Assessments

Pursuant to 18 U.S.C. § 3013, the court shall impose a special assessment on any person convicted of an offense against the United States. The imposition of special assessments under this section is mandatory and without regard to the defendant's ability to pay. Assessments are at times imposed against indigent defendants, including undocumented aliens who are about to be deported. In such cases, where there is no likelihood that the assessment will be paid, the government should petition to remit uncollectible special assessments at the time of sentencing.

In those cases where the convicted person (1) has no assets to satisfy the assessment, (2) is not sentenced to a fine, restitution or other monetary penalty, and (3) is not sentenced to any incarceration, the Assistant United States Attorney who is present at sentencing should move for remission of the assessment at that time pursuant to 18 U.S.C. § 3573. The absence of assets can be evidenced by the need for court appointed counsel or based on information from the border patrol in the case of an undocumented alien.

3-12.600 Efforts for Victims of Crime

In compliance with the Mandatory Victims Restitution Act of 1996, Pub. L. 104-132, Section 209, the Attorney General issued the following guidelines for enforcement of restitution orders:

Orders of restitution imposed under the Mandatory Victims Restitution Act must be enforced to the fullest extent of the law. Restitution owed to victims of crimes is a critical part of the criminal judgment. The Financial Litigation Units in the United States Attorneys' offices should take all steps possible to help ensure that this money is collected and that victims of crime are fully compensated for their losses. All prosecutors and Victim-Witness Coordinators must support the mission of criminal debt collection.

Absent a court-ordered stay on appeal, a defendant who fails to pay restitution that is due immediately or defaults on a payment plan should be aggressively pursued for collection of the debt. In anticipation of an eventual revision to USAM § [3-12.400], the following guidelines should be followed:

In order to guarantee enforcement to the fullest extent of the law, a lien should be filed by the United States in all cases where restitution is ordered and not immediately paid. Additionally, discovery of the debtor's assets should be pursued, including, but not limited to: reviewing the presentence report for asset information; requesting a financial statement from the debtor or completed interrogatories regarding assets and liabilities or, in the case of an incarcerated debtor, consulting with the assigned case manager regarding assets and liabilities; inquiring whether any victims have information about the debtor's assets; requesting asset information from the prosecutor and case agent; and, researching on-line property locator services available to the FLU.

In cases where the United States Attorney's office has reason to believe that the debtor might have assets based on the inquiries and research set forth above or other information, a credit report should be obtained and, where practicable, the deposition of the defendant or other parties who may have knowledge of the debtor's assets should be conducted.

If it is discovered that a defendant who has defaulted on payment of restitution has the ability to pay, a default hearing under 18 U.S.C. 3613A, or resentencing pursuant to 18 U.S.C. 3614, should be considered. All enforcement remedies, including those under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308, should be pursued, including garnishment of the debtor's wages, execution of the debtor's nonexempt property and filing of a fraudulent transfer action.

Enforced collection remedies should only be used against debtors under the supervision of the probation office after consultation with that office. Additionally, while the new law provides the government the ability to reach substantial assets of a criminal defendant, the government must be cautious about seizing a debtor's residence if family members would be left homeless. For this reason, approval of the United States Attorney is required prior to executing upon a criminal debtor's residence. USAM § 3-10.540.

Financial Litigation Unit efforts to collect restitution for nonfederal crime victims should be pursued at least as aggressively as the collection of fines and restitution to federal agencies. These efforts can, however, be minimal if the victim is willing and financially able to pursue collection in its own behalf. In many cases, corporate or nonfederal government victims may be in a better position to pursue enforcement than the United States Attorney's office and they should be encouraged to do so, thus freeing up resources in the United States Attorney's office to concentrate on other needy victims.